

Appln No. 10/622,198

Amdt date March 10, 2005

Reply to Office action of December 10, 2004

#### **REMARKS/ARGUMENTS**

Claims 1-21 are in the present application, of which claims 1, 3, 6 and 13 are independent. Claims 1, 3, 5, 6, 8 and 13 have been amended herein. Applicants appreciate the indication that claim 3 is allowable. As claim 3 has been written in independent form as required by the Examiner, applicants request that claim 3 be allowed. Further, applicants respectfully request reconsideration and allowance of claims 1-2 and 4-20. Applicants also request consideration on the merits and allowance of the newly added claim 21.

#### **I. The Amendment to the Specification**

The specification has been amended to enter the application number for a related case, the contents of which have already been incorporated into the present application at the time of filing. As such, no new matter has been entered.

#### **II. Objections to Claims 18-20**

Claims 18-20 have been objected to because the base claim from which they depend, namely, claim 13, only recites "removing a spa cover from a top of a spa" in the preamble. Claim 13 has been amended, and now the preamble recites, in a relevant portion, "removing a spa cover from a top of a spa and/or placing the spa cover on the top of the spa." Hence, now that claim 13 also recites "placing the spa cover on the top of the spa," applicants request that the objection to claims 18-20 be withdrawn.

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**III. Rejection of Claims 5 and 8 under 35 U.S.C. §112, Second Paragraph**

Claims 5 and 8 have been rejected under 35 U.S.C. §112, second paragraph, as being incomplete for allegedly omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. Applicants have amended claims 5 and 8 such that now they each recite "an elongated opening coupled to said at least one hole via a pin," applicants request that the rejection of claims 5 and 8 under 35 U.S.C. §112, second paragraph, be withdrawn. Such "pin" is disclosed, for example, on page 8, lines 11-17 of the present application as filed. Therefore, no new matter has been introduced.

Since the Office Action already indicates that claims 5 and 8 are otherwise allowable, applicants request that claims 5 and 8 be allowed.

**IV. Rejection of claims 1, 2, 4, 6, 7, 13, and 18 under 35 U.S.C. §102(b)**

Claims 1, 2, 4, 6, 7, 13 and 18 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 6,000,071 ("Fettes"). With respect to claims 1, 2, 4, 6, and 7, the Examiner contends that "Fettes discloses a hinge assembly for a spa cover comprising a mounting bracket (60) installed near a top of a spa, a slide bracket (80) and a support arm (70) pivotably coupled (at 88) to the slide bracket. . ." (Emphasis Added).

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As such, the Examiner appears to equate the "spa lifting arm 70" of Fettes with the "support arm" in claims of the present application. Applicants submit, however, that the "support arm" in the claims of the present application is vastly different from the spa lifting arm 70/extension arm 140 of Fettes. As can be seen in FIG. 4 of Fettes, the spa lifting arm 70/extension arm 140 is pivotably coupled to the spa cover 16. In more detail, it can be seen by comparing FIGs. 1 and 4 of Fettes that the spa lifting arm 70/extension arm 140 is not fixedly attached to the spa cover 16 to prevent relative rotational movement. Instead, the spa lifting arm 70/extension arm 140 appears to be pivotably coupled to the spa cover 16 about the transversely-extending hinge 21.

On the other hand, in exemplary embodiments of the present invention, the support arm 108 is fixedly attached to the spa cover 102 using metal plates 104 and 105, as shown in FIG. 1, for example, to prevent relative rotational movement between the support arm and the spa cover.

Claim 1 recites, in a relevant portion, "[a] hinge assembly for coupling a spa cover to a spa, comprising . . . a support arm adapted to be fixedly attached to the spa cover to prevent relative rotational movement between the support arm and the spa cover . . . ." Since Fettes does not disclose such a hinge assembly, claim 1 is not anticipated by Fettes. Therefore, applicants request that the rejection of claim 1 be withdrawn and that it be allowed.

Since claims 2 and 4 depend, directly or indirectly, from claim 1, they incorporate all the terms and limitations of claim

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1 in addition to other limitations, which together further patentably distinguish them over the cited references. Therefore, applicants request that the rejection of claims 2 and 4 be withdrawn and that they be allowed.

Claim 6 recites, in a relevant portion, "[a] spa system comprising . . . a support arm fixedly attached to the spa cover to prevent relative rotational movement between the support arm and the spa cover . . . ." Since Fettes does not disclose such a spa system, claim 6 is not anticipated by Fettes. Therefore, applicants request that the rejection of claim 6 be withdrawn and that it be allowed.

Since claim 7 depends from claim 6, it incorporates all the terms and limitations of claim 6 in addition to other limitations, which together further patentably distinguish it over the cited references. Therefore, applicants request that the rejection of claim 7 be withdrawn and that it be allowed.

In rejecting claim 13, the Examiner contends that "Fettes discloses a method where the spa cover (16) is removed from the spa (10) by sliding the spa cover towards a rear end of the spa (occurs as 80 slide in 60)." Applicants submit, however, that the spa cover 16 of Fettes does not slide rearward because it is pivotably attached to one end of the extension arm 140 (e.g., about the transversely extending hinge 21), which is fixedly coupled to the lift arm 70; the other end of the lift arm 70 is pivotably coupled to a side plate 62 via a pivot pin 74; and the side plate 62 is fixedly coupled to the tub wall 14 via the channel bracket 60/right angle bracket 66 (see FIGs. 1-3; col. 3, line 3 to col. 4, line 16). As such, as the lift arm 70 is

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rotated about the pivot pin 74, the spa cover 16 would be rotated as well, but it would not slide rearward. Therefore, any movement between the link lever assembly 80 and the channel bracket 60 does not result in any sliding of the cover in the spa cover lift system disclosed by Fettes.

Claim 13 recites, in a relevant portion, "[a] method of removing a spa cover from a top of a spa and/or placing the spa cover on the top of the spa, said method comprising: sliding the spa cover towards a rear end of the spa" (Emphasis Added). Since Fettes does not disclose such a method, claim 13 is not anticipated by Fettes. Therefore, applicants request that the rejection of claim 13 be withdrawn and that it be allowed.

Since claim 18 depends from claim 13, it incorporates all the terms and limitations of claim 13 in addition to other limitations, which together further patentably distinguish it over the cited references. Therefore, applicants request that the rejection of claim 18 be withdrawn and that it be allowed.

**V. Rejection of claims 9-12 under 35 U.S.C. §103(a)**

Claims 9-12 have been rejected under 35 U.S.C. §103(a) as allegedly being obvious over Fettes in view of U.S. Patent No. 6,442,799 ("Duarte et al.") or Duarte et al. in combination with U.S. Patent No. 6,423,899 ("Reiker") and/or U.S. Patent No. 6,139,236 ("Ito").

Since claims 9-12 depend, directly or indirectly, from claim 6, they incorporate all the terms and limitations of claim 6 in addition to other limitations, which together further patentably distinguish them over the cited references.

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Therefore, applicants request that the rejection of claims 9-12 be withdrawn and that they be allowed.

**VI. Rejection of claims 14-17, 19 and 20 under 35 U.S.C. §103(a)**

Claims 14-17, 19 and 20 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Fettes in view of U.S. Patent No. 3,961,723 ("Eckel").

In rejecting these claims, the Examiner contends that "Eckel teaches a cover for a receptacle where the cover (12) is slid rearward (see figure 2), and rotated (see figure 3). As the cover is slid toward the rear, the cover is lifted from the receptacle. . . ." Then, the Examiner contends that "[i]t would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Fettes as taught by Eckel in order to provide a cover in which a user may avoid having to lift at any time."

Applicants traverse the Examiner's contention because of at least the following reason.

According to Eckel, "[t]he principal object of my invention is to provide a cover for a receptacle that is relatively heavy and which, when pushed rearwardly, automatically slides to open position and maintains that open position, and likewise, when pulled forwardly, can be slid easily to closed position, thus avoiding having to lift the cover at any time." (Col. 1, lines 1-9, Emphasis Added).

According to MPEP § 2143.01, "[i]f proposed modification would render the prior art invention being modified

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unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." If Fettes were to be modified using the mechanism disclosed by Eckel for "rotating the spa cover so as to remove it completely from the top of the spa," it would not be very easy to slide the cover to the closed position. This is because Eckel discloses a receptacle for which the cover 10 is fixedly attached to the channel members 28 and 30 via the connector plates 24 and 26, respectively (Col. 1, lines 43-47), and the channel members 28 and 30 slide with respect to the rails 32 and 34 that are pivotably attached to slideway guides 42 and 44 of the receptacle (e.g., see FIGs. 2-4; col. 1, lines 49-54), and if the sliding cover mechanism of Eckel is combined with the spa cover lift system of Fettes, when the cover is at almost a right angle with respect to ground (e.g., FIG. 4 of Fettes), the rails 32 and 34 (of Eckel) would also form almost a right angle with respect to ground. Since the cover is slidably mounted on the rails 32 and 34, the cover at such a right angle would make it very difficult to slide the cover back to a closed position.

Hence, to prevent the cover 10 from being rotated too far back, thus making it difficult to slide the cover to the closed position, Eckel provides a stop member 20. Therefore, if the stop member 20 were eliminated to combine the mechanism of Eckel with that of Fettes, it would make it difficult to bring the cover 10 to the closed position by merely sliding.

As such, the mechanism of Eckel for slidably opening and closing the cover, when combined with Fettes to practice the teachings of the present invention, would be rendered

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unsatisfactory for Eckel's intended purpose of making it easy to slide the cover between open and closed positions. Therefore, there is no suggestion or motivation to make the modification suggested by the Examiner according to MPEP § 2143.01, and a *prima facie* case of obviousness for claims 14-17 and 19-20 would not be established by combining Fettes with Eckel.

Further, since claims 14-17 and 19-20 depend, directly or indirectly, on claim 13, they incorporate all the terms and limitations of claim 13 in addition to other limitations, which together further patentably distinguish them over the cited references. Therefore, applicants request that the rejection of claims 14-17, 19 and 20 be withdrawn and that they be allowed.

In addition, since claim 21 depends from claim 13, claim 21 incorporates all the terms and limitations of claim 13, in addition to other limitations, which together further patentably distinguish it over the cited references. Therefore, applicants request that the newly added claim 21 be allowed.

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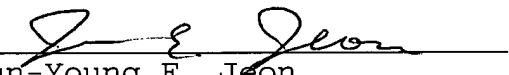
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**VII. Concluding Remarks**

In view of the foregoing amendments and remarks, applicants respectfully request an early issuance of a patent with claims 1-21. If there are any remaining issues that can be addressed over the telephone, the Examiner is invited to call applicants' attorney at the number listed below.

Respectfully submitted,

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